



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket No. 21-93; DA 21-1499; FR ID 61508]

#### Establishing Emergency Connectivity Fund to Close the Homework Gap

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Wireline Competition Bureau (the Bureau) grants a petition for an expedited waiver of the Emergency Connectivity Fund (ECF) Program's invoice filing deadline submitted by the State E-rate Coordinators' Alliance (SECA) and clarifies the service delivery date for certain funding requests.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Gabriela Gross, Telecommunications Access Policy Division, Wireline Competition Bureau, at [gabriela.gross@fcc.gov](mailto:gabriela.gross@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in WC Docket No. 21-93; DA 21-1499, adopted and released on December 2, 2021. The full text of this document is available for public inspection on the Commission's website at <https://www.fcc.gov/document/wcb-waives-ecf-invoice-deadline-and-clarifies-service-delivery-date>.

### Synopsis

#### I. INTRODUCTION

1. In the Order, the Bureau grants a petition for an expedited waiver of the ECF Program's invoice filing deadline submitted by SECA. Specifically, and subject to the limitations stated in the Order, the Bureau waives §§ 54.1711(d) and (e) of the Commission's rules to provide relief to applicants that: (a) applied for ECF funding during the first or second

application filing windows; (b) incorrectly used June 30, 2022 as the service delivery date on their ECF FCC Form 471 applications for equipment and/or other non-recurring services, rather than the actual service delivery date; and (c) received a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) noting August 29, 2022 as the invoice filing deadline based on the incorrect service delivery date (Affected Program Participants).

2. Accordingly, the Bureau directs the Universal Service Administrative Company (USAC), the Administrator of the ECF Program, to continue to use the August 29, 2022 invoice filing deadline noted on the Affected Program Participants' FCDLs and RFCDLs and allow them to submit their requests for reimbursement on or before this date. To the extent other applicants incorrectly used June 30, 2022 as the service delivery date for equipment and/or non-recurring services, rather than the actual delivery date, but have not yet received an FCDL or RFCDL with an invoice filing deadline, the Bureau directs USAC to use June 30, 2022 as the service delivery date for these requests. The Bureau also extends this relief to service providers that agreed to file requests for reimbursement on behalf of these applicants. Going forward, to avoid confusion and for administrative ease, the Bureau clarifies that the service delivery date for all requests for equipment, other non-recurring services, and recurring services submitted in any filing window covering funding for purchases made between July 1, 2021 and June 30, 2022 is June 30, 2022 (i.e., the last date of the funding period) and modifies this procedural rule accordingly.

## **II. DISCUSSION**

3. Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

4. Given the confusion around the appropriate service delivery date to use for

equipment and other non-recurring services, and the reliance on an incorrect invoice filing deadline as a result, the Bureau finds that granting a limited waiver of the invoice filing deadline for the Affected Program Participants is appropriate and allows them to submit their requests for reimbursement by August 29, 2022. Although the Bureau's *Public Notice*, 86 FR 41408, August 2, 2021, established June 30, 2022 as the service delivery date for equipment and other non-recurring services *if* the equipment or services had not yet been ordered or received at the time of the applicant's funding request submission, some applicants mistakenly used this date as the service delivery date despite having already received the equipment and/or services at the time of their filing, resulting in USAC's issuance of FCDLs and RFCDLs with an incorrect invoice filing deadline of August 29, 2022 (i.e., 60 days after June 30, 2022), rather than an earlier filing deadline based on their actual service delivery date. As a result, these applicants may not know that their requests for reimbursement are in fact due before August 29, 2022, and their requests for reimbursement will be denied as untimely without the Bureau's action.

5. Moreover, a waiver of the invoice filing deadline will not lead to any undue advantage in funding as the Affected Program Participants will not receive more funding than that allowed under the ECF Program rules, and the equipment and services have already been delivered. In addition, the Bureau finds that the public interest would not be served were these Affected Program Participants to lose ECF funding for equipment and services needed to connect students, school staff, and library patrons during this unprecedented time.

6. The Bureau therefore directs USAC to continue to use the August 29, 2022 invoice filing deadline noted on the FCDLs and RFCDLs and allow the Affected Program Participants to submit their requests for reimbursement on or before this date. To the extent other applicants incorrectly used June 30, 2022 as the service delivery date for equipment and/or other non-recurring services despite having already received them at the time of their application filing, but have not yet received an FCDL or RFCDL, the Bureau directs USAC to use June 30, 2022 as the service delivery date for these requests. The Bureau also extends this relief to

service providers that agreed to file requests for reimbursement on behalf of these applicants.

7. To avoid confusion and minimize administrative burdens, for the first two application filing windows and any subsequent window the Commission may open for eligible purchases made between the same period (i.e., July 1, 2021 through June 30, 2022), the Bureau allows applicants to use June 30, 2022 (i.e., the last date of the funding period) as the service delivery date for all funding requests for equipment, other non-recurring services, and recurring services submitted during these windows. The Bureau takes this action solely for purposes of establishing an invoice filing deadline for these funding requests and streamlining the process for program participants. The Bureau modifies § 54.1711(e) accordingly as reflected in the following. The Bureau makes these changes without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules. The updated rule will become effective upon publication of the Order in the Federal Register.

8. In granting the requested relief, the Bureau emphasizes that the Order does not alter the obligation of ECF Program participants to comply with the Commission's rules, including their obligation to certify to receipt of eligible equipment and/or services on their ECF FCC Forms 472 and 474 (i.e., the requests for reimbursement). Nor does it impact funding requests for construction of new networks, and the Bureau reminds applicants seeking support for future construction that they have one year from the date of a funding commitment decision to show that construction is completed and services have been provided. The Bureau also remind applicants that, unlike E-Rate program rules, ECF Program rules do not permit any invoice filing extensions. For this reason, any ECF Program participant that requires additional time to submit their requests for reimbursement beyond the relief granted herein must file a request for waiver directly with the Commission and demonstrate good cause.

9. Finally, the Bureau finds no evidence of waste, fraud, or abuse presented by waiving the invoice filing deadline. The Bureau emphasizes that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the ECF

Program are used for appropriate purposes. Although the Bureau grants a waiver of the Commission's invoice filing deadline for the ECF Program, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with ECF Program rules and requirements.

### **III. ORDERING CLAUSES**

10. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154 and 254, and §§ 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291, and 1.3, that 47 CFR 54.1711 of the Commission's rules IS WAIVED to the extent provided herein.

11. IT IS FURTHER ORDERED, that pursuant to § 1.102(b)(1) of the Commission's rules, 47 CFR 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

12. The amended rule adopted in the Order and contained in the following constitutes a rule of agency organization, procedure and practice and is not subject to the APA requirements pursuant to 5 U.S.C. 553(b)(3)(A). Accordingly, this amended rule is EFFECTIVE upon publication in the **Federal Register**.

#### **List of Subjects in 47 CFR Part 54**

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.  
FEDERAL COMMUNICATIONS COMMISSION.

**Cheryl Callahan**

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## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

### **PART 54 — UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601-1609, unless otherwise noted.

2. Amend 54.1711 by revising paragraph (e) to read as follows:

#### **§ 54.1711 Emergency Connectivity Fund requests for reimbursement.**

\* \* \* \* \*

(e) *Service delivery date.* For the initial filing window set forth in § 54.1708(b) and any subsequent filing windows covering funding for purchases made between July 1, 2021 and June 30, 2022, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2022.